

Message Text

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ACTION EUR-12

INFO OCT-01 ISO-00 AGRE-00 CEA-01 CIAE-00 COME-00
DODE-00 EB-08 FRB-01 H-02 INR-07 INT-05 L-03
LAB-04 NSAE-00 NSC-05 PA-02 AID-05 SS-15 STR-04
ITC-01 TRSE-00 USIA-15 PRS-01 SP-02 OMB-01 XMB-04
OPIC-06 FEA-01 JUSE-00 /106 W
-----191310Z 010557 /43

R 181917Z MAR 77
FM AMEMBASSY OTTAWA
TO SECSTATE WASHDC 2838
INFO AMCONSUL MONTREAL
ALL OTHER CANADIAN CONSULS (BY POUCH)

UNCLAS SECTION 1 OF 2 OTTAWA 01709

E.O.11652:N/A
TAGS: ETRD, CA
SUBJECT: COMBINES INVESTIGATION ACT--STAGE II AMENDMENTS

1. BEGIN SUMMARY. SECOND PHASE OF COMBINES INVESTIGATION ACT INTRODUCED MARCH 16 GIVES EXTENSIVE POWERS TO NEW COMPETITION BOARD, BUT ALSO GRANTS EXEMPTIONS FOR MERGERS AND SPECIALIZATION AGREEMENT IF THEY IMPROVE COST-EFFICIENCY AND COMPETITIVENESS. CLASS ACTION SUITS INTRODUCED FOR FIRST TIME. BANKING ACT PROVISIONS COVERING COMPETITION TO BE TRANSFERRED TO THIS LEGISLATION. NEW MEASURES PROPOSED TO COPE WITH INTERNATIONAL RESTRICTIVE TRADE PRACTICES. LANGUAGE OF BILL SUGGESTS THESE MEASURES WILL HAVE EXTRA-TERRITORIAL APPLICATION. DOCUMENTATION BEING POUCHED TO DEPARTMENT. END SUMMARY.

2. CONSUMER AND CORPORATE AFFAIRS MINISTER ANTHONY ABBOTT INTRODUCED MARCH 16 SECOND STAGE AMENDMENTS TO COMBINES INVESTIGATION ACT. FIRST STAGE DEALING WITH MISLEADING ADVERTISING AND MARKETING PRACTICES WAS APPROVED
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DECEMBER 1975. NEW BILL PROPOSES THAT EXISTING COMBINES INVESTIGATION ACT BE RENAMED THE COMPETITION ACT. PRESENT FOUR-MEMBER RESTRICTIVE TRADE PRACTICES COMMISSION WOULD BE REPLACED BY A COMPETITION BOARD CONSISTING OF UP TO SEVEN PERMANENT AND FIVE ASSOCIATE MEMBERS. PRIMARY RESPONSIBILITY OF BOARD WOULD BE TO UNDERTAKE CIVIL REVIEW FUNCTION PROVIDED FOR IN THE ACT.

PRESENT DIRECTOR OF INVESTIGATION AND RESEARCH WOULD
BECOME COMPETITION POLICY ADVOCATE.

3. THE LEGISLATION WOULD EMPOWER BOARD TO DETERMINE
WHETHER MAJOR CORPORATE MERGERS, SPECIALIZATION
AGREEMENTS TO RATIONALIZE PRODUCTION, AND CERTAIN
MONOPOLISTIC PRACTICES WERE JUSTIFIED BY PROSPECTIVE
GAINS IN EFFICIENCY AND THE INCREASED ABILITY OF
PARTICULAR INDUSTRIES TO MEET FOREIGN COMPETITION, DESPITE
EFFECT THEY MIGHT HAVE IN REDUCING COMPETITION AMONG
DOMESTIC FIRMS. SIMILAR CONSIDERATIONS GOVERN AMENDMENT
BROADENING EXEMPTION FROM ANTI-COMBINES CHARGES BEFORE
THE COURTS FOR COMPANIES WHICH JOIN FORCES TO PROMOTE
INCREASED CANADIAN EXPORTS. C&CA OFFICIALS JUSTIFY
DELETION OF CRIMINAL PROHIBITION AGAINST CERTAIN MERGERS
BY NOTING THAT IN SOME INDUSTRIES SCALE OF PRODUCTION OF
INDIVIDUAL PRODUCTS IS INSUFFICIENT TO ENABLE CANADIAN
FIRMS TO COMPETE EFFECTIVELY WITH GIANT PRODUCERS EITHER
IN MARKETS ABROAD OR AT HOME.

4. STAGE ONE LEGISLATION ESTABLISHED THE RIGHT OF CIVIL
SUIT FOR INDIVIDUALS IN FEDERAL COURT FOR DAMAGES
RESULTING FROM INFRACTION OF THE COMBINES LAW. STAGE TWO
WOULD IN ADDITION PROVIDE FOR CLASS ACTIONS. UNDER ITS
TERMS, A REPRESENTATIVE COULD LAUNCH A SUIT ON BEHALF
OF A CLASS OF PERSONS SIMILARLY AFFECTED TO OBTAIN
COMPENSATION FOR DAMAGES SUFFERED AS A RESULT OF
VIOLATIONS OF THE ACT. COURTS WOULD ALSO BE AUTHORIZED
TO ISSUE INJUNCTIONS OR PROVIDE OTHER FORMS OF RELIEF
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IN ORDER TO PREVENT RECURRENCE OF THE LOSS OR DAMAGE.

5. THE BILL WOULD ALSO REQUIRE ALL FEDERAL REGULATORY
AGENCIES TO CARRY OUT THEIR MANDATE IN A WAY THAT
WOULD HAVE LEAST RESTRICTIVE EFFECT ON COMPETITION
CONSISTENT WITH ACHIEVEMENT OF THEIR OBJECTIVES.

6. IT IS ALSO PROPOSED THAT SECTIONS IN BANK ACT COVERING
COMPETITION AMONG CHARTERED BANKS BE TRANSFERRED TO
COMPETITION ACT. RESPONSIBILITY FOR MONITORING
COMPLIANCE WITH THOSE PROVISIONS WOULD BE SHIFTED FROM
INSPECTOR-GENERAL OF BANKS TO COMPETITION POLICY
ADVOCATE.

7. THE BILL PROVIDES FOR A NUMBER OF CHANGES IN SECTIONS
RELATING TO OFFENSES UNDER THE ACT. EXISTING CRIMINAL
SANCTION RELATING TO MERGERS WOULD BE DROPPED, BEING
DISPLACED BY THE CIVIL REVIEW PROCEDURES. SECTIONS
RELATING TO MONOPOLIES AND A NUMBER OF RESTRICTIVE

PRACTICES WOULD BE RETAINED WITH SOME REVISIONS AIMED AT ACHIEVING GREATER CLARITY.

8. LONG-STANDING PROHIBITION IN COMBINES LAW AGAINST PRICE DISCRIMINATION BETWEEN COMPETING BUYERS ACQUIRING SAME QUANTITY AND QUALITY OF PRODUCTS IS RETAINED WITH SOME CLARIFYING AMENDMENTS.

9. THE BILL PROPOSES TO REDUCE RIGIDITY OF THE BASING-POINT PRICING SYSTEM FOR GOODS DELIVERED BY SHIP. IT WOULD MAKE IT AN OFFENSE FOR A SUPPLIER TO REFUSE TO

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ALLOW A CUSTOMER TO TAKE DELIVERY AT ANY POINT WHERE SUPPLIER MAKES DELIVERY TO OTHER CUSTOMERS.

10. WITH REGARD TO INTERNATIONAL TRADE, BILL PROPOSES NEW MEASURE TO MAKE IT POSSIBLE TO DEAL MORE EFFECTIVELY WITH PRIVATE INTERNATIONAL CARTELS. IT WOULD MAKE IT AN OFFENSE (FINE AND/OR 5 YEAR IMPRISONMENT) FOR ANY COMPANY IN CANADA TO AGREE WITH AN UNAFFILIATED COMPANY ABROAD TO RESTRICT SUBSTANTIALLY EXPORTS OR IMPORTS OF A PRODUCT UNLESS COURT WAS SATISFIED THAT CANADIAN PARTIES DID NOT ACCOUNT FOR 50 PERCENT OR MORE OF CANADIAN PRODUCTION OR SUPPLY. THIS DOES NOT APPLY TO AGREEMENTS SPECIFICALLY AUTHORIZED BY PARLIAMENT, OR FOR EXAMPLE TO INTER-GOVERNMENTAL AGREEMENTS ON COMMODITIES, WHERE THERE IS NO AGREEMENT AMONG PRIVATE

PARTIES.

11. IT SHOULD BE NOTED THAT SUBSECTION 32.1(1) UNDER
STAGE ONE AMENDMENTS DEALING WITH FOREIGN DIRECTIVES
HAS BEEN RENUMBERED 32.11(1) AND BROADENED UNDER NEW
BILL TO APPLY TO MATTERS DEALING WITH CONSPIRACIES,
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COMBINATIONS, AGREEMENTS OR ARRANGEMENTS "WHEREVER
ENTERED INTO" THAT HAVE AS OBJECTIVE RESTRICTION OF
CANADIAN IMPORTS OR EXPORTS OR ADVERSE EFFECT ON
COMPETITION. VERBATIM TEXT FOLLOWS:

32.11 (1) ANY CORPORATION THAT CARRIES
ON BUSINESS IN CANADA AND THAT IMPLEMENTS,
IN WHOLE OR IN PART IN CANADA, A DIRECTIVE,
INSTRUCTION, INTIMATION OF POLICY OR
OTHER COMMUNICATION TO THE CORPORATION
OR ANY PERSON FROM A PERSON IN A COUNTRY
OTHER THAN CANADA WHO IS IN A POSITION TO
DIRECT OR INFLUENCE THE POLICIES OF THE
CORPORATION, WHICH COMMUNICATION IS FOR
THE PURPOSE OF GIVING EFFECT IN CANADA TO A
CONSPIRACY, COMBINATION, AGREEMENT OR
ARRANGEMENT WHEREVER ENTERED INTO THAT
HAS AN OBJECTIVE DESCRIBED IN ANY OF
PARAGRAPHS 32(1)(A) TO (D) IS, WHETHER
OR NOT ANY DIRECTOR OR OFFICER OF THE
CORPORATION IN CANADA HAS KNOWLEDGE OF THE
CONSPIRACY, COMBINATION, AGREEMENT OR
ARRANGEMENT, GUILTY OF AN INDICTABLE
OFFENCE AND IS LIABLE TO A FINE IN THE
DISCRETION OF THE COURT.

12. FIVE COPIES OF BILL AND EXPLANATORY BOOKLET BEING
POUCHED TO EUR/CAN FOR FORWARDING 1 COPY EACH TO
JUSTICE, COMMERCE AND TREASURY. ENDERS

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